IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9829 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TRIKAMBHAI S PATEL

Versus

KANTABEN D/O JOITARAM LAKHUDAS

Appearance:

MR JITENDRA M PATEL for Petitioners

MR PJ VYAS for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 09/02/2001

C.A.V JUDGEMENT

1. This is a petition filed by the petitioner above-named under Article 227 of the Constitution of India challenging the judgment and order dated July nil,

1992 recorded by the learned Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.943 of 1991 under which the learned Tribunal dismissed the said Revision Application of the present petitioner confirming the judgments and orders of the Lower Revenue Authorities.

2. The facts giving rise to this petition may be briefly stated as follows.

3. Lakhubhai had two sons Joitaram and Shankerbhai. Both have passed away. Joitaram left behind him his two daughters who are shown as respondent No.1 and 2. On the other hand Shankerbhai seems to have had four sons. Petitioners No.1, 2 and 7 appear to be the three sons of deceased Shankerbhai and petitioner No.3 appears to be the widow of the deceased son Babubhai of deceased Shankerbhai. Petitioners No.4, 5 and 6 appear to be the minor sons and daughter of deceased Babubhai.

4. The petitioners have come out with the case that deceased Joitaram had a small shop and he was dealing with the said business and therefore under contract of tenancy deceased Shankerbhai was cultivating disputed land described in para 2 of the petition as tenant. That therefore the deceased Shankerbhai was entitled to become the deemed purchaser in accordance with provisions made in the Bombay Tenancy and Agricultural Land Act, 1948. Therefore an application was made for declaring the petitioners 1 & 2 and deceased Babubhai to be the tenant in respect of the said land. The learned Mamlatdar and A.L.T., Visnagar at Kheralu conducted tenancy case No.7094-4/85 which was decided by him by order dated 20.10.1984, under which the learned Mamlatdar held that the petitioners were not the tenant in respect of the land in dispute.

5. The petitioners carried the matter in appeal before the learned Deputy Collector at Mahesana, which was registered as Tenancy Appeal No.3/90 at Mahesana. The learned Deputy Collector heard the parties and dismissed the said appeal of the petitioners by order dated 4.10.1991. Feeling aggrieved by the said order of the learned Deputy Collector the petitioner preferred Revision Application being Revision Application No.TEN.B.A.943 of 1991 which came to be dismissed by the learned Tribunal by order dated July nil, 1992. The petitioners were not satisfied by the aforesaid three judgements and orders, and therefore, they have preferred this petition before this court. It has been mainly contended here that the aforesaid authorities have not properly appreciated the legal and factual aspects of the

case. That the learned Tribunal has not properly appreciated the fact and evidence that the deceased Shankerbhai was a contractual tenant and he was not cultivating the land as the brother of Joitaram. That therefore, the said authorities have committed a serious error in not holding that the petitioners are entitled to claim to be the tenants in respect of the disputed property. That therefore, the judgments and orders of the aforesaid authorities are illegal and erroneous and deserve to be set-aside. The petitioners, therefore, pray that the present petition be allowed, the aforesaid judgements and orders be quashed and set-aside and the petitioners be held to be tenants in respect of the properties in question.

6. Rule was issued and Mr.P.J.Vyas has appeared in response to the service of rule. I have heard Messrs. J.M.Patel and P.J.Vyas learned advocates for the parties and have perused the papers. Mr.J.M.Patel learned advocate for the petitioners has argued at length that since deceased Joitaram was carrying on business his land was being cultivated by deceased Shankerbhai as his tenant, and therefore, deceased Shankerbhai has become tenant of the said land. The aforesaid authorities have considered that aspect of the case and all of them have recorded concurrent finding of fact that deceased Shankerbhai was cultivating the said land as the brother of deceased Joitaram and hence he could not claim tenancy in respect of the said land. It appears that ample opportunity was given to the present petitioners in order to prove the fact of tenancy of Shankerbhai and they were also at liberty to produce the evidence to show that Shankerbhai was a contractual tenant and he was not cultivating the land in question as the brother of Joitaram.

7. Despite the said opportunity, the petitioners have not been able to prove before either of the aforesaid three authorities that Shankerbhai was cultivating the land as contractual tenant and not as a brother of deceased Joitaram. Therefore the said three authorities have recorded concurrent findings of fact that deceased Shankerbhai was cultivating land as the brother of Joitaram and not as a contractual tenant of Joitaram. Therefore there is concurrent finding of fact recorded by the three authorities and the learned advocate for the petitioners has not been in a position to show that the findings recorded by the aforesaid three authorities are illegal, erroneous and perverse. There is nothing to show that the findings have been recorded by the said three authorities against the weight of

evidence produced on record by the parties. Therefore when three authorities have recorded the concurrent findings of fact with regard to the nature of possession of the land with Shankerbhai, it is not open to this court exercising extraordinary constitutional jurisdiction to sit as a court of appeal over the decision of the said three authorities.

8. So, on one hand, this court does not sit as a court of appeal. On the other hand there is nothing on record to show that the aforesaid finding of fact is against the weight of evidence. This court also cannot undertake the process of reappreciation of evidence. However even if it is done, then also, it is not shown from the record that the appreciation made by the aforesaid three authorities is wrong or illegal. Simply because the possession of the land is proved to be with the petitioners and since the possession was not objected, it would not mean that deceased Shankerbhai and his sons have been cultivating the land in question as contractual tenants. In fact, there is absolutely no material on record to show the contractual tenancy between Shankerbhai and Joitaram. In that view of the matter it is very clear that the petitioners have totally failed in proving before the aforesaid authorities that the petitioners are the tenants of the property in question. Therefore it cannot be said that the aforesaid three authorities have committed illegality in holding that the petitioners are not the tenants in respect of the said property. Therefore there is no merit in the present petition and it deserves to be dismissed.

9. In aforesaid view of the matter the present petition is ordered to be dismissed. Rule discharged. There shall be no order as to costs.

9.2.2001 (D.P.Buch, J).

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